IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

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CIVIL WRIT PETITION NO. 15685 OF 2007.
DATE OF DECISION: NOVEMBER 27, 2007.

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Parkash Versus The Addl:Civil Judge (Sr.Divn), Jind and others.

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CORAM: HON'BLE MR. JUSTICE K.S.GAREWAL, AND HON'BLE MR. JUSTICE R.S.MADAN, JJ.

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PRESENT: SHRI MAHAVIR SANDHU, ADVOCATE, FOR THE PETITIONER.

SHRI RAJBIR SEHRAWAT, ADVOCATE, FOR RESPONDENT NO.2.

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R.S.Madan, J

The petitioner, by way of filing writ petition under Articles 226 of the Constitution, seeks the issuance of a writ in the nature of certiorari for quashing the orders dated 12.9.2007/ 20.9.2007 (Annexure P-3), passed by Additional Civil Judge (Senior Division) Jind, respondent No.1.

In brief the facts of the case are that election for the post of Sarpanch of Gram Panchayat Lohchab, Tehsil and District Jind was held on April 03, 2005. The petitioner and respondents No. 2 to 7 contested the election for the post of Sarpanch of Gram Panchayat. After the completion of all the formalities, the petitioner having secured 447 votes, was declared winning candidate. The detail of votes secured by each candidate, as per the result-sheet (Annexure P-1) prepared by the Returning Officer, is given as under:-

Total votes polled	:	1438.
Votes secured by the petitioner	:	447.
Votes secured by respondent No.2	:	444
Votes secured by other candidates votes	:	150, 112, 217, 13,02 and 01 respectively.
Votes declared invalid	:	52

Thus the total figure comes to 1460-52= 1386.

Dis-satisfied with the election of petitioner as Sarpanch of

Village, respondent No.2 herein, filed election petition before the Additional Civil Judge (Senior Division), Jind, who vide order dated 12.9.2007 ordered for re-counting of votes on 20.9.2007. On recounting the learned trial court at page 5 of the order dated September 20, 2007 depicted the following figure, which is relevant to be noticed here:-

Tuhi Ram	:	1
Dharampal	:	3
Parkash	:	434+3=437
Pirthvi	:	215
Rajbir	:	13
Balkar	:	112
Harnarain	:	434+3=437
Hoshiara	:	149
Invalid Votes	:	59+14=73
Disputed Votes	:	20(14+6)
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Total:-	:	1440 **(Actually it should be 1460)**
Total Votes Polled	:	1440
Invalid Votes	:	73
Total Number of Valid Votes	:	1367

According to the learned counsel for the petitioner, from the bare perusal of the figure shown by the learned trial court, it is apparent that the figure did not tally with the figure given by the Returning Officer in Annexure P-1.

It is pertinent to mention here that as per the order passed by the learned trial court, after recount both the petitioner and respondent No.2 were found to have secured 437 votes each. As a result thereof, the learned trial court by adopting the method of draw of lots, declared respondent No.2 as the winning candidate, vide order dated September 20, 2007 (Annexure P-3).

It is this order (Annexure re P-3), which the petitioner has challenged by filing the writ petition.

We have heard the learned counsel for the parties and have carefully perused the record.

The learned counsel for the petitioner contended that the order

Annexure P-3 passed by the learned Additional Civil Judge (Senior Division), Jind is totally against the statute and liable to be quashed. He further contended that the learned Civil Judge was not competent to order for recount of the votes polled merely at the asking of the respondent. Even the figure which has been shown by the learned trial court, did not tally and is incorrect. There is a difference of 20. The total votes including disputed votes when calculated comes to 1460 but the learned trial court has mentioned the total figure as 1440. Thus there is a patent irregularity which is apparent and goes to the root of the case.

In order to appreciate the contentions of the learned counsel for the petitioner, it would be appropriate to refer to sub- ***section*** (4) to ***Section 176*** of the ***Haryana Panchayati Raj Act*** , 1994 (for short "the ***Act***") which reads as under :-

> "(4)(a) If on the holding such inquiry the civil court finds that a candidate has, for the purpose of election committed a corrupt practice within the meaning of sub- ***section*** (5), he shall set aside the election and declare the candidate disqualified for the purpose of election and fresh election may be held.
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> (aa) If on holding such inquiry the civil court finds that-
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> (i) On the date of his election a returned candidate was not qualified to be elected;
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> (ii) any nomination has been improperly rejected' or
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> (iii) the result of the election, in so far as it concerns a returned candidate, has been materially affected by improper acceptance of any nomination or by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with or violation of the provisions of the Constitution of India or of this Act, or any rules or orders made under this Act,

election of such returned candidate shall be set aside and fresh election may be held.

(b) If, in any case to which clause (a) does not apply, the validity of an election is in dispute between two or more candidates, the court shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the largest number of valid votes in his favour, to have been duly elected :

Provided that after such computation, if any, equality of votes is found to exist between any candidate and the addition of one vote will entitle any of the candidates to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in the favour of such candidate or candidate, as the case may be, elected by lot drawn in the presence of Judge in such manner as he may determine."

The learned counsel further relied upon ***M. Chinnasamy v. K.C. Palanisamy & Ors., 2004(1) RCR(Civil) 303 (SC) : ((2004)6 SCC 341)***, wherein the Hon'ble Apex Court dealing with the same point opined as under:-

"The question as to what would constitute material facts would, however, depend upon the facts and circumstances of each case. It is trite that an order of re-counting of votes can be passed when the following ingredients are satisfied : (1) if there is a prima facie case; (2) material facts therefor are pleaded; (3) the court shall not direct re-counting by way of roving or fishing inquiry; and (4) such an objection had been taken recourse to.

The necessity of "maintaining the secrecy of ballot papers" should be kept in view before a re-counting is directed to be made. A direction for re-counting shall not be issued only because the margin of votes between the returned candidate and the election petitioner is narrow."

The learned counsel for the petitioner relying upon the judgment of the Supreme Court reported as *M. Chinnasamy case (supra)* contended that since the learned trial court has not followed the guide-lines

framed in the above said case law, the order Annexure P-3 passed by the learned trial court is patently illegal, null and void and is liable to be quashed.

On the other hand, the learned counsel for respondent No.2 contended that the order passed by the learned Additional Civil Judge (Senior Division), Jind is a well reasoned order. The learned Civil Judge, after going through the facts and circumstances of the case decided the election petition in favour of the respondent (petitioner before the trial court), after swaying the material brought on the record. Not only this the learned trial court was well within its jurisdiction and competent to decide the fate of the petitioner and the respondent, by adopting the method of “draw of lots”, as provided under Section 68 the Act, which reads as under:-

> "*68. Equality of votes.* - If, after the counting of the votes is completed, and the addition of one vote will entitle any of those candidates to be declared elected, the Returning Officer shall forthwith decide between those candidates by lot, and proceed as if the candidates on whom the lot falls had received an additional vote."
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> "*35. Procedure in case of tie* - If, after the counting of votes is completed, votes polled by two candidates are equal, and the addition of one vote will entitle any of these candidates to be declared elected. The Returning Officer shall forthwith decide between those candidates by draw of lots as the candidate in whose favour the lot falls has received an additional vote."

A bare perusal of the figure depicted in the preceding paras would reveal that the figure given by the presiding officer in Annexure P-1 and the figure mentioned by the trial court in its order, did not tally with each other. Even, the figure given by the trial court shows that the total votes polled were 1440 whereas on counting it comes to 1460. Thus there

is difference of 20 votes, which the trial court has shown as disputed votes, but while counting the votes did not add this figure to the total votes polled. Further more, the learned trial court while passing the impugned order, did not have a glance to the rules on the subject. In the instant case, the case of the petitioner clearly falls within the ambit of Sub-section 4(aa)(iii), which has been reproduced above and shows that the learned trial court after recount of votes, taking it to be the case of equal votes, pass the order of toss and declared respondent No.2 as the winning candidate, which on the face of sub-section 4(aa)(iii) was clearly in violation of the statute and the trial court should have set aside the election of the petitioner as Sarpanch of the Village and ordered for the fresh election.

Thus as a sequel of above discussion, the order Annexure P-3 passed by the learned trial court is set aside and the respondent State of Haryana is directed to conduct the fresh election for the post of Sarpanch, in accordance with law, within a period of six months of the receipt of a certified copy of this order. No order as to costs.

(R.S.Madan)
Judge

(K.S.Garewal)
Judge

November 27, 2007.